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NOTES OF CASES.

Discovery—Discovery and Inspection of Buried Human Body.—

In an action to recover damages for the death of one Danahy, who is alleged to have died from injuries received in a collision with defendant's automobile defendant prays discovery of the body of Danahy to ascertain the cause of his death. Code Civ. Proc., § 803, provides that a court of record has power to compel a party to an action pending therein to produce for inspection any article or property in his possession or under his control relating to the merits of the action or of the defense. Held, that the application should be denied. *Danahy v. Kellogg* (1910), 126 N. Y. Supp. 444. We reproduce the following annotation from the "Michigan Law Review," vol. 9, p. 522.

In equity the general rule is that a bill will lie by either party to an action at law to have a discovery of matter material to the claim or defense. *Reynolds v. Burgess Co.*, 71 N. H. 332, 51 Atl. 1075, 93 Am. St. Rep. 535, 57 L. R. A. 949; *Wilson v. Miller*, 104 Va. 446, 51 S. E. 837. In many states statutes have been passed regulating discovery. Some of these acts expressly provide that a bill in equity for discovery shall in no way be affected thereby. *Mahone v. Central Bank*, 17 Ga. 111. In case the statute does not so provide, it is held that they do not take away the jurisdiction of the court of equity. *Nixon v. Lumber Co.*, 150 Ala. 602, 607, 43 South. 805, 9 L. R. A. (N. S.), 1255; *Post v. Toledo, etc., Co.*, 144 Mass. 341, 13 N. E. 540, 59 Am. Rep. 86. Contra. *Cleveland v. Burnham*, 60 Wis. 16, 17 N. W. 126; *Turnbull v. Crick*, 63 Minn. 91, 65 N. W. 135. In other states statutes expressly abolish bills of discovery. *Baylis v. Bullock Mfg. Co.*, 59 App. Div. 576, 69 N. Y. Supp. 693. As to what may be the subject matter of discovery, the general rule is that one may have discovery of matter material to the claim or defense. *Wilson v. Miller*, *supra*. In *Reynolds v. Burgess*, *supra*, discovery was had of broken machinery. Facts resting in the knowledge of the defendant, books, papers or copies thereof in his possession may also be the subject of discovery. *Little v. Cooper*, 10 N. J. Eq. 273; *Utah Const. Co. v. Mont. R. Co.*, 145 Fed. 981. The authorities are in conflict on the question of the power of the court to order a physical examination of a party before trial. By the weight of authority the court may make such an order. *Miami Co. v. Bailly*, 37 Ohio St. 104; *Wanek v. Winona*, 78 Minn. 98, 80 N. W. 851, 46 L. R. A. 448. Contra. *Joliet Ry. Co. v. Call*, 143 Ill. 177, 32 N. E. 389; *Stack v. N. Y. Ry. Co.*, 177 Mass. 155, 83 Am. Rep. 269, 52 L. R. A. 328. The question in the principal case, whether a human body is a proper subject matter for discovery, came before the United States Circuit Court in *Mut. Life Ins. Co. v. Greisa*, 156 Fed. 398, and the court in that case ordered the body to be exhumed for examination.